



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-T-L-

DATE: JULY 28, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a petroleum geomechanics engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner argues that he satisfies the national interest waiver requirements.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner received a master of science degree in petroleum engineering from [REDACTED] in 2011. The Director determined that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

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established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

The Petitioner submitted documentation showing that his work as a petroleum geomechanics engineer is in an area of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Petitioner provided evidence indicating that the proposed benefit of his petroleum engineering research has national and international scope, as the results from his work are disseminated to others in the field through conferences and journals. Therefore, the record supports the Director's determination that the Petitioner meets the second prong of the *NYSDOT* national interest analysis.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on October 15, 2014. At the time of filing, he was working as a petroleum geomechanics engineer for [REDACTED]. The Petitioner seeks to continue his research in the petroleum engineering field. He provided letters of support from experts in the field discussing his research findings and how his work has influenced the field. For example, [REDACTED] an associate professor in the Department of Energy Resources Engineering at [REDACTED] stated:

Once a well is positioned properly, hydraulic fracturing is hypothesized to assist naturally occurring fractures in oil and gas production. [The Petitioner] completed a parametric study of well configuration, in-situ stress conditions, in-situ pressure, and mechanical properties to determine hydraulic fracturing's ability to test this theory in multi-well completions. In doing so, he made the major discovery of a trend in pore pressure that led him to the astute conclusion that proper hydraulic fracturing (completion) scheme with optimal pore pressure can be helpful to oil and gas production in multi-well competitions.

In addition, [REDACTED] professor emeritus at [REDACTED] and a member of the [REDACTED] indicated that the Petitioner "created a simulation tool to test the effects of injection of fluid and extraction of fluid in [] fractured reservoirs" and described his work as a "groundbreaking" method for improving energy extraction from geothermal reservoirs. Similarly, [REDACTED] Chair Professor in the [REDACTED]

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_____ at the _____ mentioned that the Petitioner's "simulation method provides a much-needed tool that can characterize the activity of geothermal reservoirs, increasing the field's ability to cultivate the use of geothermal reservoirs as energy sources." Furthermore, _____ professor emeritus at the _____ noted that the Petitioner "has perfected his technique for drilling event analysis and is one of the most precise analysts in the country in this area."

_____ professor and head of the department of energy and mineral engineering at _____ stated that the Petitioner's "research has provided the petroleum engineering field with cutting edge information on the geomechanical process of hydraulic fracture propagation in a naturally fractured rock mass" and that "[h]is guidelines have proved to be helpful and beneficial to increases in shale gas production not only across the United States but the entire world." Additionally, _____ a geomechanics manager in reservoir development services at _____ indicated that the Petitioner's "research revealed for the first time, the crucial parameters affecting shale gas production and provided useful information as to the optimization of hydraulic fracture simulation in low permeability of shale oil/gas reservoirs." _____ also noted that "[r]esearchers have since been able to use this information to optimize shale oil and gas production and ensure the highest concentrations of shale resources are extracted from reservoirs." Furthermore, _____ pointed to the "unprecedented stability" of the Petitioner's model, explaining that it "can attain higher uniaxial compressive strength to tensile strength ratios and larger friction coefficients than other models have been able to achieve."

The record included documentation of numerous articles that the Petitioner has written or co-written, and evidence demonstrating that his published and presented work has been frequently cited by independent researchers. A substantial number of favorable independent citations for an article is an indication that other researchers are familiar with the work and may have been influenced by it. According to _____ citation indices that the Petitioner provides on appeal, his research articles have garnered 68 independent citations by others in the field. For example, the Petitioner's article entitled '_____

_____ in _____ has been independently cited to 19 times. The Petitioner also submits information from _____ database reflecting average rates of citation for journal articles in the engineering field as a basis for comparison with his citation record. This information, which reflects a 10-year average for the engineering field of 4.76 citations, sets the Petitioner's citation record apart from that of other engineering researchers.

The submitted documentation, including reference letters and the frequent citation of the Petitioner's work by other researchers, is sufficient to demonstrate that his work has had a degree of influence on his field. The record establishes the significance of this Petitioner's research, as opposed to the general area of research, and identifies specific benefits attributable to his work that have influenced the field as a whole. We therefore find that the Petitioner's past record of achievement justifies a projection that he will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

As discussed above, the record demonstrates that the benefit of retaining this petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, will be in the national interest of the United States.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of B-T-L-*, ID# 17396 (AAO July 28, 2016)